

MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
JULY 7, 2005

The Lake County Board of Adjustment met Thursday, July 7, 2005 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Howard (Bob) Fox, Jr.
Darren Eslinger
Ruth Gray
Mary Link Bennett
Donald Schreiner, Chairman

Board Members Not Present:

Henry Wolsmann, Vice Chairman
Carl Ludecke

Staff Present:

Terrie Diesbourg, Director, Customer Services Division
Anita Greiner, Senior Planner, Customer Services Division
Anna Ely, Public Hearing Coordinator, Customer Services Division
Sherie Ross, Public Hearing Coordinator, Planning & Development Services Division
Melanie Marsh, Assistant County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted for the record that there was a quorum present. He confirmed that Proof of Publication for each case is on file in the Customer Services Division.

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Minutes

MOTION by Mary Link Bennett, SECONDED by Ruth Gray to approve the June 9, 2005 Board of Adjustment Public Hearing minutes, as submitted.

FOR: Eslinger, Fox, Gray, Bennett, Schreiner

AGAINST: None

NOT PRESENT: Wolsmann, Ludecke

MOTION CARRIED: 5-0

Chairman Schreiner explained the procedure for hearing cases on the consent agenda.

Withdrawals

In response to Chairman Schreiner, Anita Greiner, Senior Planner, said the following cases have been withdrawn: BOA#68-05-5, BOA#70-05-3, BOA#74-05-1, and BOA#78-05-5.

There was no one on the Board who had an objection to the above cases being withdrawn.

Peggy Elron said she is relatively new to Florida and Lake County. She made plans to come to this meeting; and when she arrived, she learned it had been withdrawn. She asked if there was a way to notify citizens who were sent notices that a case has been withdrawn. Chairman Schreiner explained that the County notifies by advertising in the newspaper and posting on the property. It would be almost impossible to notify all those people who saw the newspaper or signs.

MOTION by Mary Link Bennett, SECONDED by Bob Fox to accept the withdrawal of BOA#68-05-5, BOA#70-05-3, BOA#74-05-1, and BOA#78-05-5.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner

AGAINST: None

NOT PRESENT: Wolsmann, Ludecke

MOTION CARRIED: 5-0

Discussion of Consent Agenda

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#56-05-3, BOA#64-05-2, BOA#65-05-1, BOA#66-05-5, BOA#67-05-2, and BOA#72-05-1.

CASE NO.:	BOA#56-05-3	AGENDA NO.:	2
OWNERS:	Phillip S. and Lori W. Smith		
APPLICANT:	Steven J. Richey, P.A.		
CASE NO.:	BOA#64-05-2	AGENDA NO.:	4
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OWNERS/APPLICANTS:	Michael and Susan Osborn		
CASE NO.:	BOA#72-05-1	AGENDA NO.:	12
OWNER:	Harold Myers Fitkin		
APPLICANT:	Morris Randall Mathieu		

MOTION by Darren Eslinger, SECONDED by Ruth Gray to take the following actions on the above consent agenda:

BOA#56-05-3	Approval with conditions
BOA#64-05-2	Approval with conditions
BOA#65-05-1	Approval with conditions
BOA#66-05-5	Approval with conditions
BOA#67-05-2	Approval with conditions
BOA#72-05-1	Approval

FOR: **Fox, Eslinger, Gray, Bennett, Schreiner**

AGAINST: **None**

NOT PRESENT: **Wolsmann, Ludecke**

MOTION CARRIED: 5-0

Chairman Schreiner explained the procedure for hearing cases on the regular agenda. He noted that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case. These exhibits will be on file in the Customer Services Division.

CASE NO.: BOA#49-05-3

AGENDA NO.: 1

OWNERS: Dennis and Debbie Williams

APPLICANT: Jimmy D. Crawford

Anita Greiner presented the case. She showed the aerial from the staff report on the monitor. She submitted an aerial (County Exhibit A) showing how the property would be split and a map (County Exhibit B) showing the flood area on the site. She referred to the e-mail she had received from Jimmy Crawford; copies were distributed to the members and are now part of the staff report backup. She noted that a letter of opposition from Lacy's Groves had been received. After receiving a letter from Mr. Crawford this afternoon that was written by the attorney for Lacy's Groves regarding the number of homes allowed on the easement and a withdrawal of their opposition, Ms. Greiner read it into the record and submitted the letter as County Exhibit C. She said that one of the reasons staff was recommending denial was that the easement was created for one single-family dwelling unit. If the Board decides to approve the variance to allow the minor lot split, staff would recommend the following conditions:

1. The County shall not be obligated to maintain the easement/private road. Deed restrictions must be recorded in the public records of Lake County requiring the property owners or future property owners to maintain the easement or private road that is being created so as to provide free and passable ingress and egress to the nearest County-maintained road. Such deed restrictions must be recorded prior to the recordation of the final development order for the minor lot split.
2. Road name signs shall be installed for the newly created easement or private road in accordance with the applicable County regulations.
3. The proposed three parcels cannot be split further by any means while being accessed from an easement or private road.
4. All requirements set forth by the Florida Department of Environmental Protection (FDEP) must be adhered to prior to obtaining final approval of the minor lot split.

In response to Mary Link Bennett, Ms. Greiner said that if the owner wanted a family lot split on one of the parcels in the future, it would be necessary to come back before this Board for a variance to the 50-foot wide easement requirement. The current zoning is Agriculture.

Darren Eslinger asked the location of the access for the southern five-acre parcel. Ms. Greiner pointed out where the access would be. There would be at least 150 feet of road frontage on the easement for each parcel.

Jimmy Crawford, attorney with Gray Robinson in Clermont, said he has represented the Williamses since 2003. He reiterated the history of this property since the Williamses purchased the property in 2000. He submitted an aerial as Applicant Exhibit A. He explained that presently on the property with the Williamses are a doublewide mobile home, their 11-year old daughter, and two horses. Mr. Williams is ill, and they have over \$200,000 in unreimbursable medical bills. They have incurred a \$67,800 bill to build the road. They purchased a mitigation credit to satisfy the FDEP requirements at a cost of \$16,000. They paid about \$30,000 in attorney bills for the lawsuit and \$11,000 for an environmental consultant to meet the FDEP requirement to restore some of this area. (These bills were shown on the monitor but were not submitted as evidence by the applicant. Upon contacting Mr. Crawford, he was not able to produce them.) As a result of these debts, the Williamses decided they must sell two lots. Mr. Crawford said this property cannot be platted as platting requires full right-of-way to build a road to County standards. They do not have that, and the judge will not give it to them. Therefore, they are stuck with the 25-foot easement and have no choice but to use the minor lot split process to accomplish what they want to do. They have worked out an agreement with Lacy's Groves to allow the Williamses to split the property into three lots. With the condition on the variance prohibiting further splits, that could be the basis for denial if a family lot split was requested in the future. He felt the three-lot split was consistent with the area.

CASE NO.: BOA#49-05-3 **AGENDA NO.:** 1

OWNERS: Dennis and Debbie Williams **PAGE NO.:** 2

APPLICANT: Jimmy D. Crawford

In response to Ruth Gray, Mr. Crawford said the hardship is based partly on the illness. The Williamses have no recourse for the bad advice they received from their attorney at the time they purchased the property. He reiterated that they have a genuine financial and family hardship that he did not feel they created themselves. They asked the right people but got the wrong answers.

There was no one in the audience who wished to speak on this case.

MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to approve the variance request in BOA#49-05-3 for three parcels with the following conditions:

1. The County shall not be obligated to maintain the easement/private road. Deed restrictions must be recorded in the public records of Lake County requiring the property owners or future property owners to maintain the easement or private road that is being created so as to provide free and passable ingress and egress to the nearest County-maintained road. Such deed restrictions must be recorded prior to the recordation of the final development order for the minor lot split.
2. Road name signs shall be installed for the newly created easement or private road in accordance with the applicable County regulations.
3. The proposed three parcels cannot be split further by any means while being accessed from an easement or private road.
4. All requirements set forth by the Florida Department of Environmental Protection (FDEP) must be adhered to prior to obtaining final approval of the minor lot split.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner

AGAINST: None

NOT PRESENT: Wolsmann, Ludecke

MOTION CARRIED: 5-0

CASE NO.:

BOA#63-05-4

AGENDA N O.:

3

OWNERS/APPLICANTS:

Joseph M. and Nancy V. Gill

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She submitted a Flood Determination FIRM map as County Exhibit A and an aerial (County Exhibit B) showing how the parcel would be split. Parcel 1 as shown on County Exhibit B has a single-family dwelling unit on it. She submitted a map showing the sizes of the parcels in the area as County Exhibit C. She said she had spoken to Ross Pluta in Public Works about a shared driveway. Because of the large amount of road frontage on CR 44A, Mr. Pluta said he would not require the parcels to have a joint driveway. She also spoke to John Kruse of the Planning and Development Services Division about what the applicants would have to do if they went through Development Review Staff (DRS) and platted the parcels. There would be no more requirements by platting than there would be if the applicants went through the minor lot split process. Ms. Greiner submitted a map showing the flood line and wetland line as County Exhibit D. She explained that this case was taken off the consent agenda because several letters of opposition had been received. She submitted a map (County Exhibit E) showing the properties owned by the writers of the letters of opposition.

At the request of Ruth Gray, Ms. Greiner submitted a letter from Ms. Gill's doctor confirming their medical hardship as County Exhibit F.

Joseph Gill said he and his wife bought this property in 1999 with the intention of keeping the entire property intact. However, his wife has been diagnosed with fibromyalgia so they would like to try to sell off a portion of their property. They do not want more than one house next to them. He noted that one of the letters of opposition was from Mr. Champion, who had a contract to buy the property; but it has now expired. He did not know why Mr. Champion was objecting to this. He said another letter writer, Mr. Banks, owns some property across the lake from the subject property. Another letter of opposition was received from Fresh Cut. Fresh Cut is partially owned by Mr. Banks. Recently Fresh Cut has had their property surveyed to be sold. Part of their property fronts on CR 44A. Regarding the comment from Mr. Banks about the pollution from the proposed additional driveway going into the lake, Mr. Gill said Mr. Banks has owned a fernery that has drained into the lake for many years. Other neighbors have no problem with the requested split.

At the request of Ruth Gray, Mr. Gill pointed out the properties that are owned by people he just spoke of. Mr. Gill said they have another contract on the property.

There was no one in the audience who wished to speak on this case.

In response to Darren Eslinger, Ms. Greiner said the Gills would have 80 feet of depth remaining on which to place the house.

Mr. Gill said FEMA now has their packet of information. They have agreed to pull FEMA's lines back to what used to be the 66-foot contour line, which is now the 65-foot contour line. They can build a house 80 feet deep and not be in a floodplain. He is trying to get as much done for the future buyers as he can.

Ms. Greiner submitted a plat of survey as County Exhibit G.

MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to approve the variance request in BOA#63-05-4.

CASE NO.: BOA#63-05-4

AGENDA N O.: 3

OWNERS/APPLICANTS: Joseph M. and Nancy V. Gill

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FOR: Fox, Eslinger, Gray, Bennett, Schreiner

AGAINST: None

NOT PRESENT: Wolsmann, Ludecke

MOTION CARRIED: 5-0

Chairman stated that if a variance is approved for any case today, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter.

CASE NO.:

BOA#69-05-1

AGENDA NO.:

9

OWNER/APPLICANT:

John V. Ardito

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial and pictures from the staff report on the monitor. She submitted a plan from the applicant (County Exhibit A) showing a single-family dwelling unit, septic tank, and well on each of the three parcels.

When Mary Link Bennett asked if the septic tanks on the subject property would meet the distance requirement from the wells on adjacent properties, Ms. Greiner said she did not know. This request does not meet the intent of the Code, and this Board does not have the authority to grant a variance to that.

John Ardito said he had just built a house on the property west of the subject property with a septic tank and well because it was a lot of record. That parcel was 75 feet by 140 feet. There are 16 parcels that size around the adjacent area. He said he is involved with the Lake Count Affordable Housing program, which is a program that grants funds for homebuyers to purchase homes that they normally would not be able to. The property in question would be utilizing those funds only. If the Board cannot grant this variance, he asked if the Board could tell him what he could do with this property. He said there is an Aquasoft water treatment system 300 feet from the subject property, and he is going to try to get water to the property, which would alleviate the need for wells and septic tanks.

Bob Fox confirmed that the dwelling units on the three parcels would be modular homes. Mr. Ardito said the modular homes are built to Department of Community Affairs (DCA) modular standards. Ms. Greiner said the homes are not an issue in the variance.

Dennis Krener said he has been a resident of Lake County for 25 years and has lived on Townsend Street for seven years. His house is built on two lots. There is a 2-1/2 foot drop in elevation from Morse Street down to his home. There is another 1-1/2 to 2 feet drop to the other side of Townsend Street where the water sheds off when there is a major rain. With Townsend Street being a dirt road, he was concerned about adding more houses. His house has 1,850 square feet. The neighbors maintain Townsend Street. In response to Ms. Bennett, Mr. Ardito said the water flows down onto Townsend Street and lays in the subject property.

Bobby Lloyd said he lives in front of Dennis Krener. At the request of Ms. Gray, he pointed out on the aerial where he lives. He opposed the growth development in this area as it is within 300 feet of his house. He was also concerned about the rain as Mr. Krener stated.

Willie B. Lane and her husband, Johnnie Lane, were also opposed to this variance request.

Ms. Gray asked Ms. Greiner if she had discussed with the applicant the possibility of creating two lots instead of three. Ms. Greiner said it still would not meet two of the minimum criteria that she had stated earlier. The Comprehensive Plan requires of minimum lot size of 21,780 square feet if septic tanks and wells are used.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to deny the variance request in BOA#69-05-1.

FOR:

Fox, Eslinger, Gray, Bennett, Schreiner

AGAINST:

None

NOT PRESENT:

Wolsmann, Ludecke

MOTION CARRIED: 5-0

CASE N O.: BOA#71-05-3**AGENDA NO.: 11****OWNER: Exclusive Homes, Inc.**
APPLICANT: G. Douglas Laman

Anita Greiner, Senior Planner, showed the aerial from the staff report on the monitor.

Ruth Gray said she was the one who asked that this be removed from the consent agenda. Ms. Greiner has provided her with a site plan. She asked for a few minutes to review it as it may answer the questions she has. At the request of Ms. Gray, Ms. Greiner pointed out the location of the retention pond and canal on the site plan (County Exhibit A). Ms. Gray was informed by Ms. Greiner that the pool deck would be 26 feet from the jurisdictional wetland line. When Ms. Gray asked about the parking area, Ms. Greiner said that would not require a variance. After reviewing the site plan, Ms. Gray said she had no objection to the request.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance request in BOA#71-05-3 with the condition that the storm water swale must be constructed as indicated on the approved plans and must be inspected by the Lake County Customer Services Division prior to a final inspection of the swimming pool by the Lake County Building Division. In addition, the owner and subsequent owner(s) shall be required to maintain the storm water plan as approved.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner**AGAINST: None****NOT PRESENT: Wolsmann, Ludecke****MOTION CARRIED: 5-0**

CASE NO.:**BOA#73-05-5****AGENDA NO.:****13****OWNERS/APPLICANTS:****John R. and Laurie A. Hamilton**

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor. She said this case was removed from the consent agenda because the County received one letter of opposition. Two letters of support were also received. She submitted a site plan as County Exhibit A. She also submitted an aerial (County Exhibit B) showing the subject property and the properties owned by the writers of the letters of opposition and support.

John R. Hamilton thanked Ms. Greiner for her help in this matter. He said he bought this pool a year ago, and it has been in his garage awaiting this approval. He was not aware a permit was required for an aboveground swimming pool.

There was no one in the audience who wished to speak on this case.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance request in BOA#73-05-5 with the condition that the storm water swale must be constructed as indicated on the approved plans and must be inspected by the Lake County Customer Services Division prior to a final inspection of the swimming pool by the Lake County Building Division. In addition, the owner and subsequent owner(s) shall be required to maintain the storm water plan as approved.

FOR:**Fox, Eslinger, Gray, Bennett, Schreiner****AGAINST:****None****NOT PRESENT:****Wolsmann, Ludecke****MOTION CARRIED: 5-0**

CASE NO.: BOA#75-05-2**AGENDA NO.: 15****OWNERS: Ronald L. and Katherine L. Vail**
APPLICANT: Sharon Martin

Anita Greiner, Senior Planner, showed the aerial from the staff report on the monitor.

Ruth Gray said she had asked that this be removed from the consent agenda. From the narrative, she said she was not able to locate the shared driveway. Ms. Greiner explained that the shared driveway does not exist at this time, but she pointed out where it would be located on the site plan drawing she submitted as County Exhibit A.

MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to approve the variance request in BOA#75-05-2 with the condition that the proposed lots “A” and “B” create and utilize a shared driveway onto CR561 that is located across from an existing driveway to the west of the subject site on CR 561.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner**AGAINST: None****NOT PRESENT: Wolsmann, Ludecke****MOTION CARRIED: 5-0**

CASE NO.: BOA#76-05-2

AGENDA NO.: 16

OWNER: John Spitulski
APPLICANT: Susan Spitulski

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor. She submitted a copy of the original plat as County Exhibit A. She said that Lot No. 12 was one big lot when it was first platted as Monte Vista Farms. Sometime in the 1960 and 1970s, some of the land began to be sold off. The County started recognizing some smaller lots in that area through deeds prior to May 20, 1981. She submitted a copy of Lot #12 (County Exhibit B) that was platted as part of Monte Vista Farms. A canal was dug and small lots were created. She submitted a survey as County Exhibit C. She pointed out the 35-foot easement for canal access/parking. With the request for 15-foot setback from the easement, there will be no intrusion into the easement. Staff does not believe this request would be a detriment to people driving or parking on the easement. If the lot was 74 feet wide, the requirement would be 15 feet from the easement. Any new development is allowed to be 15 feet from an easement. Mr. Spitulski is also asking for the house to be 15 feet from the edge of the canal. Since the house would be 43.5 feet from the road and the requirement is 40.5 feet, it would be possible to move it up three feet to be further from the canal. However, Mr. Spitulski is asking for 15 feet because he still has to go through the process for the septic tank and well. If he has to get a variance for the well and septic tank, he will go through Environmental Health. At the request of Darren Eslinger, Ms. Greiner drew the location of the swale on the survey submitted as County Exhibit C. She submitted a drawing of the swale as County Exhibit D. Ms. Greiner noted that letters of opposition had been received from nine different individuals. She submitted an aerial (County Exhibit E) showing the properties owned by the writers of the letters of opposition. In response to Donald Schreiner, Ms. Greiner said her measurements show the house to be 2,750 square feet; but if Mr. Spitulski is planning a second story, then the actual square footage may be more. However, he does meet the impervious surface ratio requirement.

Mary Link Bennett asked if the easement is a recorded easement for the public. Ms. Greiner stated that the easement is not part of the plat and is not a public easement. It is a private easement.

Mr. Schreiner asked what should be done so it can become a public easement. Melanie Marsh, Assistant County Attorney, said it appears that some of the property owners may be claiming a prescriptive right, that they have used the easement to access the canal. However, for purposes of this Board and the variance, that is not an issue before this Board. If the property owners have disputes over who can use that easement and when they can use it, that is a civil matter.

Mr. Eslinger said it appears the County is recognizing the easement by requiring a setback from that easement. Ms. Greiner replied that the County recognizes it as an easement because County setbacks are from private or public easements. The County recognizes this easement as a private easement as far as setbacks. Ms. Marsh said the zoning recognition of the easement has nothing to do with who has the right to use the easement. Prescriptive easements must be determined by a court. The easement is shown on their plot plan so the County will recognize it as an easement for setback purposes. Ms. Greiner said this Board must determine whether there is a safe distance if Mr. Spitulski builds 15 feet from that easement. In the event that this easement issue ends up in a court of law and the court determines that it is not an easement, Ms. Marsh said the variance would not matter because there would be no easement there from which to have a 15-foot setback.

There was a ten-minute recess so Ms. Gray could read the letters of opposition that had been submitted.

Mr. Gray said it appears that most of the structures in this subdivision are 35 feet from either the jurisdictional wetland line or the easement. Ms. Greiner said the easement does not go on the majority of the properties. The easement is only for the first two lots and one other lot. The other parcels are actually in the canal. The average setback from the canal bank to the single-family dwelling unit is 34 feet seven inches. That does not include pools, sheds, additions or garages.

CASE NO.: BOA#76-05-2

AGENDA NO.: 16

OWNER: John Spitulski
APPLICANT: Susan Spitulski

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John Spitulski stated that he is present to ask this Board to grant a variance so he can build a single-family home on a canal lot, recognizing the distances of the existing homes and their proximity to the water and the setback that was originally set. It had appeared to him that numerous houses were closer than the average setback. The four parcels in question that have the easement have a total of 70 feet of easement. Because of an additional three or four feet of width on his property, he is restricted to 25 feet instead of 15 feet. Therefore, he is requesting a setback of 15 feet. Regarding proximity to the water, he was only allowed to obtain information from residents on Browns Canal Road. He was not allowed to obtain information from residents on Firemans Canal Road. He said he was asking to have a built-in window within the confines of the property to allow him to build a single-family residence and have the ability to move the house around within the property to get a septic tank in place, realizing he has many other hurdles to jump over if this variance is granted. He submitted four sheets of pictures as Applicant Exhibit A. He noted that the houses on the canal seem to be closer to the water's edge than what he is asking for. Most of the owners of the houses shown in the pictures are present at this meeting. He pointed out specific houses in the pictures that are closer than the average setback of 37 feet. He showed pictures of houses on both Browns Canal and Firemans Canal. He stated that closer to the end of the canal, the majority of the residences have full water frontage and have retained their property by the construction of a seawall on the jurisdictional wetland line for the house. He would be the only resident on that canal who will have contained the storm water runoff created by the improvement of his property. The proposed retention area will have a depth of only four inches. It has bank slopes so there will be no liability issue. There is good percolation. The retention area will not encroach the easement. He did not feel that asking for a 15-foot setback was unreasonable, and it may be greater than that. He said the existing houses he showed were built prior to the current criteria being put in place.

Carl Blevins, a resident on the Firemans Canal side of this subdivision, said he has owned his property for 15 years. It is his secondary residence. He spends about 30 percent of his time in this area. His concern is that he and the other neighbors do not know what is planned for this small lot. To meet the requirements for the septic tank will take a lot of land. He thought Lake Utilities or Utilities, Inc. would provide water to this site. The residents of this canal and their families have been using this easement for recreational purposes for close to 50 years. However, when Mr. Spitulski bought his property, they began having problems. A new lock was put on the chain preventing them from going in and out of the canal. There have been physical altercations; their lifestyles have changed. There will be litigation regarding the easement because the neighbors feel there have been inappropriate actions taken by a recent title company. The survey still shows the easement, but the title company may have made some mistakes. The neighbors are concerned that if the applicant gets the variance and starts building, then the neighbors will have more difficulties. All the existing houses on the canal were built according to the Lake County regulations at the time the house was built. He did not feel there is any hardship with this request. Mr. Spitulski should have known what the regulations and restrictions were when he bought this property. The hardship was self imposed. Since Mr. Spitulski has bought the property, they have traffic problems with both boats and automobiles, which Mr. Spitulski has brought in. The neighbors do not have a problem with constructing a house if it is built within the restrictions set by Lake County and the State of Florida. They would like to see this variance denied; but if it cannot be denied, the neighbors would like a continuance until the easement is litigated. In his mind, he could not see Mr. Spitulski being able to build a house with a septic system, berm, retention pond, and driveway on this lot and stay within the guidelines of the Land Development Regulations (LDRs).

Ms. Gray asked Mr. Blevins if he was more upset about the easement or the house. Mr. Blevins said they are somewhat concerned about the easement, but they have percolation problems with their septic tanks at the present time. They also have high water in the area. To build a retention pond at the end of the canal would not be beneficial to this community. A berm would not be beneficial. He acknowledged that the easement has caused a lot of issues. Ms. Gray pointed out that this Board does not have the authority to address the easement issue.

CASE NO.: BOA#76-05-2

AGENDA NO.: 16

OWNER: John Spitulski
APPLICANT: Susan Spitulski

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At the request of Chairman Schreiner, Melanie Marsh, Assistant County Attorney, explained that the Lake County Code provides a variance process because the law requires Lake County to do so. The variance process and what this Board is required to consider are two prong. The Board is required to look at whether the applicant can find another way in which to meet the intent of the Code other than the specific way the provision is worded. The second prong is whether or not there is an undue hardship to the applicant or whether the principles of fairness are going to be violated if the variance is not granted. She read the definitions for a hardship and principles of fairness violation. She spoke of the evidence to be considered in making these determinations. She said this Board cannot consider the private easement issue or the amount of the traffic on the easement, no matter who creates the traffic.

Ms. Gray pointed out that the issue of pollution from the septic system or drainfield going into the canal would be addressed by Environmental Health, not this Board. She added that if those in opposition feel the retention area and berm will not handle the storm water runoff, they could hire an engineer to dispute the findings of the County.

Ms. Marsh said it would be up to the Board to determine if they want to continue this case. She noted that the Code does include a provision for people who wish to be a party to this proceeding to file a notice five days prior to the hearing that they are going to participate. She is not aware of this being done by anyone.

Philip Caruso said he and his wife have 225 feet on the Firemans Canal side in three individual lots. If Mr. Spitulski is willing to continue this case until such time as a formal association can be assembled to address some of these issues, it may help to solve this dispute and the variance request may create less opposition. Ms. Gray said she would be supportive of a continuance if it would lead to negotiations and agreement on the easement. According to the Assistant County Attorney, Chairman Schreiner said the easement is not to be considered in this variance request. It appeared to him that some of the neighbors were misled as to their rights to the boat ramp and public park area.

Ms. Marsh reiterated that the easement has nothing to do with this variance. If there is no prescriptive easement, Mr. Spitulski does not need the variance because there is no secondary frontage.

Ms. Greiner added that this variance would allow the house to be 15 feet from the easement. Mr. Spitulski will not be building in the easement. Even if the court determines it is a prescriptive easement, it still exists and there is nothing inside of it to prevent the neighbors from using it.

Ms. Marsh suggested asking the owner if he is willing to continue this case. If not, then this case can proceed today.

Mr. Spitulski said he would like a Board decision at this public hearing based upon the information that has been presented regarding the hardship and the application request from the setback rules. He hopes that the evidence he has presented has shown the Board that he is very conscious of the runoff and the impervious surface he would create by building a structure. He reiterated that other houses on the canal have not been subject to the criteria he must meet.

If the easement was created for canal access only, Mr. Eslinger asked if it could be used as a driveway to Mr. Spitulski's property. Ms. Marsh said it would depend on how it was worded. If it was worded for ingress/egress, it may be possible. If it was worded so that the easement could not be used as a driveway, Mr. Eslinger questioned whether Mr. Spitulski would truly have double frontage. Ms. Greiner confirmed that he does because the definition of double frontage involves a private easement, which is what the easement is considered at this time. When Mr. Eslinger asked if it would be considered a private easement for property access through the subject property, Ms. Greiner said it could be used for that purpose. Mr.

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Eslinger then asked about an easement being separated from a property by a fence. Ms. Greiner replied that the easement would still be in the property owner's name and be considered part of the lot.

Bob Cock said he has had a house on Firemans Canal Drive for 17 years. Every family in the entire canal area is against this variance. The size of the proposed home is inconsistent with the other homes in the area. Donald Schreiner said the size of the house is not a consideration for this Board. Mr. Cock felt it should be a consideration for keeping the neighborhood in some kind of order and should be a consideration of this Board. Mr. Schreiner said this Board has no jurisdiction over that issue.

Mr. Cock stated that all lots on Firemans/Browns Canal have a 35-foot easement in the back and a 20-foot easement in the front. The 35-foot easement is for the canal and the 20-foot easement is for the road. The canal continues through most lots and ends at the last couple of lots so there is an access to the community boat ramp, and the same easement that all the other lots have is just directly in from the road to the end of the canal. The retention pond is to be placed in the back 15 feet between the house and the easement, which will have some bermed walls and four inches in the middle; but the berms come up higher and over. That is going to be next to the easement. Mr. Schreiner confirmed with Mr. Cock that some of these houses have canal backyards. Mr. Cock said the 35-foot easement is clearly on the survey for Mr. Spitulski's lot. The County recognizes it so he did not know why this would be an issue. He reiterated that the neighbors are very concerned about the safety of having a retention pond and a berm next to the easement when backing down boat trailers. Due to the size of the house, there is no room on Mr. Spitulski's lot for a driveway, septic tank, and outbuildings. This lot is adjacent to the Florida Outstanding Waters of Lake Louisa. The only usable part of the lot from the easement in the front to the water is about 100 feet. He questioned the proposed house size of 55 feet by 50 feet. All the other houses in the area have a much smaller footprint in the range of 1200 square feet with less runoff and destruction next to an environmentally sensitive area.

Mr. Cock said there is no hardship of any kind in this case. All the other houses in the area were built the size allowable under the rules. He felt Mr. Spitulski should build a house that would not require a variance. The setback rules were written by knowledgeable people. There were reasons for the rules to be written that way. When he said that Mr. Spitulski forged a neighbor's signature on a document that allows the County to measure setback distances, Mr. Schreiner said that is not a consideration for this Board. Mr. Cock said the forged documents are being used by this Board in this ruling. Chairman Schreiner said that would be a matter of law with the County Attorney. Ms. Marsh stated that a call had been made to the County Attorney's office regarding this issue. The average setback forms are not notarized forms so there is nothing the County could do in terms of filing any kind of complaint. To her knowledge, they have not heard from the person whose name was allegedly forged indicating that it was not that person's signature. The only thing that County could do is discount that particular document, but the County would still have to consider the other documents unless the others were indicated as forgery as well.

In addition, Mr. Cock said the behavior that has been taking place on Mr. Spitulski's property is something they do not want in their neighborhood. They did not like the grandiose lifestyle that Mr. Spitulski is trying to push on them. Although Mr. Spitulski talked about "trying to look out for the environment," Mr. Cock said that building such a huge house will require cutting down 100-year old oak trees.

Ms. Marsh stated that there is another board that meets at 4:00 in this room. If this Board is not done by that time, the Board will need to recess until they can meet and finish their meeting.

Mr. Cock submitted photographs as Opposition Exhibit A. He noted the dredging that has taken place on Mr. Spitulski's property. When Ms. Gray asked if there were regulations regarding wetlands and canals, Ms. Marsh said there are; and if the property owner has violated them, a complaint should be filed with the Division of Code Enforcement. It would not be an issue for this Board.

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Mr. Cock stated that there are about 15 homeowner representatives at this meeting. There are about 30 lots total in the area with some homeowners having multiple lots. At the request of Ms. Gray, Mr. Cock pointed out where he lives.

William Thompson said he owns a house on the canal, but it is a distance from Mr. Spitulski's property. Regarding the water retention area, an engineer was not consulted so it is not known whether it will work. The water is very high out there so the water table is going to prevent effective percolation of any water retention area. There is not a lot of room set aside for the retention so a larger setback may be needed to control that water. The septic system and well are another concern for the same reasons. They have already had problems with septic drainfields that seep onto the road.

Mr. Eslinger confirmed with Ms. Greiner that the 50 foot by 55 foot area would be the impervious surface area.

Andrea Bruno, a resident at 12151 Browns Canal Drive, said the camera angle Mr. Spitulski used for his photographs was deceptive. Her setback was measured this morning. Her house was one of the four houses chosen to use for the average setback. She has a porch that extends for ten feet. It still allows 25 feet clear of the water. She said Mr. Spitulski showed a picture of the house next to her house. That house has a seawall. She measured a setback of 20 to 25 feet for that house. She said Mr. Spitulski also showed a picture directly across from the canal. That project was completed last week. The rocks were put there because that house suffered a great deal of cracking. She said the neighbors feel the unfairness is to them. There is no need for a 15-foot setback. Because Mr. Spitulski said he could get anything done he wanted, it makes the neighbors question whether this is a fair process.

Tim Clarke, who lives north of the subject property, said he owns three lots and the other half of the easement. He remodeled his home two years ago. He had to put his septic system on one of the lots that he could have done a family lot split, but he was not able to. He felt it would be unfair to allow this house to be built when he was not able to put his septic tank on the lot with the house. Mr. Clarke pointed out that a lot of the pictures show porches, which is nonliving square footage. He was opposed to this variance request.

Christine Ball said she has sent in numerous correspondence to the County. She agreed with the comments of the others. She would like this Board to be fair to the neighbors as well as the applicant. She noted that the canopy of trees that has been in this community for a number of years is going to have to come down in order for Mr. Spitulski to build the house he wants to build.

Ms. Gray confirmed with Ms. Marsh that Lake County has a Landscaping Ordinance. Ms. Marsh said Mr. Spitulski would need to apply for a tree removal permit. Ms. Greiner said the applicant is not applying for a variance to that rule. There are rules he must follow and permits he must obtain before cutting any trees down.

Ms. Ball said she would like to reiterate what Ms. Bruno said about the angle used by Mr. Spitulski when taking the photographs. It is very deceiving. Those homes are much further from the canal on the Browns Canal side than the pictures show.

At the request of Ms. Gray, Ms. Bruno used the photographs in Applicant Exhibit A to point out the house with the rocks she had spoken of earlier.

Chairman Schreiner recessed the meeting to allow the Board of Examiners to have their meeting. When that Board leaves, Ms. Greiner said the Board of Adjustment will reopen this meeting.

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The meeting reconvened at 4:53 p.m.

Ms. Gray said Ms. Bruno was identifying photographs when the meeting was recessed. Ms. Greiner said Ms. Bruno had identified the house with the rocks, but Ms. Bruno said there was no picture of her house. At the request of Ms. Gray, Ms. Bruno pointed out other houses in the area using Applicant Exhibit A. She said that all of the houses that are close to the water are on Firemans Canal Drive, not on Brown's Canal Drive. Ms. Greiner said it is on the same canal, but it is across the canal. Ms. Bruno said the average setback was done on Browns Canal Drive.

Carrie Powell said she personally has nothing against Mr. Spitulski. Her main concern is the environment as this property is part of the Green Swamp Area of Critical State Concern. She felt a variance should never be granted in an area so statewide environmentally sensitive. She built a home one year ago. She also performed an average setback analysis, and she could not build the house she wanted. She built a smaller home so it fit within the average setbacks. Mr. Spitulski purchased this property knowing what could and could not be done. Therefore, hardship is totally irrelevant in this variance request. As far as violating principles of fairness, she did not feel it would be unfair for Mr. Spitulski to be required to follow the average setback as others followed the Land Development Regulations (LDRs).

Rosemary Vanglon, who lives at 12053 Browns Canal Drive, questioned the first paragraph on Page 4 of the staff report. Ms. Greiner explained that is what Mr. Spitulski wrote as to how he would meet the intent of the Code. He is saying that the swale, basin area, and berm will retain the first half inch of storm water runoff. She said that sentence on Page 4 is a quote of what he wrote. Instead of encroachment, however, he may have meant development or construction of the house. Mr. Spitulski said that is correct. He would create a retention area to contain that storm water runoff so that it would naturally percolate back through the soil rather than directly run off as it does now. Ms. Vanglon asked if an engineering test had been done on this property where the berm would be located. He said he did not have an engineer or percolation test. Mr. Spitulski said the County has indicated to him that he is required to contain 114.5 cubic feet of water. Ms. Vanglon questioned how that was determined. Ms. Greiner said there is nothing in the LDRs that would require Mr. Spitulski to hire an engineer. If he can do the calculations himself, he has a right to do that. The proposed plans exceed the County's requirement. This particular plan was checked by Scott Catusus from Lake County's Water Resources and Environmental Programs Division. Ms. Vanglon submitted photographs as Opposition Exhibit B.

Mr. Spitulski said his property is relatively flat except where it reaches the extreme back easement of the property towards the canal. The property has an average height of 42 inches above the existing watermark. He said the reason why he is asking for the variance with the extremes as presented is so he has the ability to construct other buildings after the single-family residence is built. He could only accept the average setbacks of Browns Canal although many of those who spoke have been in opposition from Firemans Canal. By the pictures shown, the houses on Firemans Canal are closer. He does not have waterfront across the entire back of his property. He would only have it on the very tip of his property. He felt he had the ability to contain that water.

Mr. Spitulski said the house dimension may vary based upon the information he will receive after he has applied for a septic tank system. If he has to build a smaller house, potentially eliminating a garage, to accommodate the Health Department, he would need some type of storage somewhere. His house would shrink proportionally, but he would request to build a shed. The window that he has asked to build within would accommodate any and all structures that he would intend to build.

Ms. Greiner submitted pictures of houses on both Browns Canal and Firemans Canal as County Exhibit F.

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APPLICANT: Susan Spitulski**PAGE NO.: 7****MOTION by Ruth Gray, SECONDED by Mary Link Bennett to deny BOA#76-05-2.**

When Mr. Eslinger asked the reason for the denial motion, Ms. Gray said she could not find any kind of hardship. Ms. Greiner pointed out that the applicant has to show either a hardship or a violation in principles of fairness. Mr. Eslinger agreed with Ms. Gray. He said the Board may be able to see a hardship or unfairness if they could see the plan of the house, knew the size of the septic system, and could determine the limitations. Without that information, Mr. Eslinger said it is hard to imagine that a house could not fit on the property and be consistent with the surrounding area. If a variance is denied, Ms. Marsh said it would be a year before the applicant could come back; and there must be a substantial change in circumstances.

Bob Fox felt that Mr. Spitulski should stay within the guidelines and could not support granting this variance.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner**AGAINST: None****NOT PRESENT: Wolsmann, Ludecke****MOTION CARRIED: 5-0**

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OWNER: Lake Grove Utilities, Inc.
APPLICANT: Karl Sanders, Esquire

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor. She submitted a map of subdivisions and vacant parcels in the area as County Exhibit A. She also noted the location of the site and the location of the proposed tower. She pointed out that there are subdivisions on both sides of the site. She did not know if those vacant parcels had been considered.

Mary Link Bennett asked about the CFD rezoning request from CFD to CFD. Ms. Greiner explained this would allow more uses such as the tower. At the present time, the CFD Ordinance would not allow this tower.

Karl Sanders, attorney, was present to represent Cingular Wireless. He pointed out the lease parcel, explaining that it is not a single parcel owned by Lake Grove Utilities. It is actually five separate parcels. The first requirement of the Tower Ordinance is that the tower must be sited 100 feet from the property line. However, the tower is located on the edge of one of the property lines, within 20 feet of the property line. That is one of the variances they are seeking. They are not seeking a variance from the property line of another property owner. It is the same owner. The Tower Ordinance also requires that the tower be centered on the parent tract. If this tract is looked at as a single tract, the spirit of the Code is met. He noted that there are two or three wastewater treatment tanks on the property. This property was rezoned to CFD in the early 1990s. Towers are permitted in the CFD zoning district. Their rezoning application if approved, would add the tower use. He submitted a letter with three maps as Applicant Exhibit A.

Mr. Sanders stated that under the Federal Communications Act, one of the things the local government is charged with looking at and they are charged with establishing is that there is an existing gap in the cell coverage. If it is established that there is a gap in coverage, then they need to demonstrate that there are no available alternative sites that they could reasonably go to. He said the maps submitted as Applicant Exhibit A show where the gap in coverage is located. He pointed out the gap in coverage on the first map. The second map shows the actual coverage that would be allowed if this tower is sited at this location. The third map shows how siting the tower at this location would fill the gap in coverage. The other little circles are other towers within the vicinity that are "handing off to one another." Siting a tower at this location will fill the gap to meet Cingular's coverage needs. It also satisfies their obligations under another law that requires the cellular companies to ensure that they can provide 9-1-1 access.

Mr. Sanders submitted a map with a search ring as Applicant Exhibit B. He explained that anywhere within that search ring they could conceivably site a tower that would be able to effectively hand off to the other towers. The proposed site is as far away from residential as a property could be in this search area. He stated that Lake Groves Utilities has plans to add a few more wastewater treatment tanks around their existing site. The tower would be situated next to them.

When Ms. Bennett asked about the sharing of towers, Mr. Sanders agreed that collocating is cheaper, but the closest tower to this proposed tower is four to six miles to the south. Due to the economy and technology, towers are not built unless it is necessary. As cellular companies merge, there is less need for new towers.

In response to Ms. Bennett, Charles Vicchini, engineer for Cingular Wireless, said they use a two-mile grid for this area. If two cell sites are located about four miles apart from each other, they can communicate adequately between each other.

Ms. Bennett asked if a different type of tower other than a monopole could be used. Mr. Vicchini said that as long as they can meet the height requirement, they can use whatever type of tower they want. Ruth Gray was informed by Mr. Vicchini that there are options available for camouflage if that is the way they must go.

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APPLICANT: Karl Sanders, Esquire

At the request of Darren Eslinger, Bob Chopra, real estate manager for Cingular Wireless, pointed out the Lake Louisa tower. The tower is across the street from Lake Louisa Estate Park on the east side of Highway 27.

Mr. Sanders said there are towers located on government-owned lands, but it is typically local- or State-owned land, not in swamps or wetland areas. It would be considerably difficult to get the requisite approvals from Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District to do a tower in those areas. Some local jurisdictions have buffer zones around the larger wetland areas to keep towers away from them. He did not know of any towers in Florida that are sited in wetlands.

In response to Ms. Eslinger, Ms. Greiner said they could probably eliminate two of the variances by doing a unity of title and tying all the property together. Mr. Sanders said they do not have the authority today to represent that they could do a unity of title. That would be up to the utility company, and he did not know their position on that. He reiterated that he feels this request meets the spirit and intent of the Code, particularly as it relates to the centering and the setbacks from adjoining property lines. Donald Schreiner did not see the purpose of a unity of title. Mr. Sanders said the unity of title will not accomplish anything more than the variance would.

Ms. Greiner asked if the fencing area and all the equipment that goes with the cell tower will go over the property line. She submitted a site plan as County Exhibit B. Mr. Sanders said the lease parcel is 70 feet by 80 feet. That will allow for the placement of a tower and the equipment to service that tower. In response to Ms. Gray, Ms. Greiner explained that Lake Groves Utilities owns the site, and they are going to lease a small portion of their property to Cingular in order to place a tower on that portion. Mr. Sanders added that they have an easement that will allow them to access the lease parcel in order to service the tower.

Mr. Eslinger confirmed with Ms. Greiner that the variance goes with the property so the variance will be granted to Lake Groves Utilities, not Cingular Wireless.

Ms. Gray spoke about conditioning this variance upon a unity of title. Mr. Sanders did not feel the unity of title would accomplish anything. The zoning is what is going to control the development on this property, not variances. Mr. Eslinger said the separate portion could be rezoned. However, if it were all aggregated, that could not be done because of the current use. Mr. Sanders pointed out that the owner plans to expand the wastewater treatment facility over the property line to where the proposed tower would be located. He reiterated that they have no control over whether the owner would or would not do a unity of title so at this time, he could not agree to that. They have authorization from Lake Grove Utilities to seek these three variances in order to site the tower at this specific location. That is the extent of his authority. Referring to County Exhibit B, Mr. Sanders said it is incorrect. Where it shows commercial zoning, it should be Agriculture.

Frank Kimmel said he lives north of the water treatment plant in Westin Hills, within 800 feet of the tower. He is a Cingular user and has no dead spaces on Highways 27, 474 or 33. He has an older phone. As far as the five parcels owned by Lake Groves Utilities, Mr. Kimmel said there are ten acres of commercial property in front for sale. Therefore, as far as combining all the parcels, that would not be possible because of the ten acres for sale. There are already three towers in the area. He named some other sites within the search ring that may be appropriate for this use. By putting a 200-foot tower in the front of this property, he will be able to view it from his property. If this is rezoned, they will be able to do just about anything to this property. Right now it is zoned for septic tanks, and there are odor problems. He did not feel something that high should be in Lake County. He questioned why it could not be in the back of the property or other available sites rather than in the middle of where homes are located.

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Ms. Greiner submitted another map as County Exhibit C Referring to County Exhibit A, Ms. Greiner pointed out other possible sites in the area. She noted that any houses on the parent parcel are not included in the structures within 800 feet.

Ms. Gray pointed out that there appears to be many unanswered questions such as other towers being located in wetlands, the location of other towers in the area, and whether there is a dead area in the vicinity.

Mr. Sanders said one fundamental question about some of the sites Ms. Greiner pointed out is whether that property is available for lease. Ms. Greiner asked if other property owners have been approached. If it is the Board's wish that they go to every property within a two-mile radius of the site and ask the owner if they can put a 200-foot tower on the property, Mr. Sanders said they can get a deferral and do that. However, he felt the evidence before the Board proves that there is no other site available. Regarding the other towers Mr. Kimmel referred to, Mr. Sanders noted that they are not within the search ring. Mr. Eslinger agreed that this is the obvious site, but he did not know if it is the best site. Mr. Sanders reiterated that they would be agreeable to a deferral to allow them to check into other sites. Ms. Gray said a postponement would also allow them to consider the possibility of a unity of title. Ms. Bennett and Mr. Eslinger did not feel that would ever happen. Ms. Greiner said the purpose of the map was to show the Board that there are other possible locations.

When Ms. Bennett asked if there was any other alternative to a 200-foot monopole tower, Mr. Vicchini said there was none in this area. There is nothing else that would fit the height requirements or the actual areas they are looking for in order to get adequate coverage between towers. Mr. Eslinger asked if more 100-foot towers could be put up, but Mr. Vicchini said the problem they are having with this particular area of Lake County is that it is very hilly. He explained a technology that cellular companies must have now called E 9-1-1, which requires the location of the caller to be identified whether it is a land phone or a cellular phone. This may cause the towers to be closer. When Mr. Eslinger asked about moving the tower further west, Ms. Vicchini said that may open up the gap again and create problems by not providing adequate coverage for E 9-1-1. He said they also need to have room for growth. This area is growing very rapidly. If they don't have another tower in this area, they will not be able to adequately handle growth. Mr. Eslinger was informed by Mr. Vicchini that the radius of a tower is approximately two miles. Mr. Vicchini added that the size of the proposed compound will allow other companies to collocate their antennas on this tower. They should be able to handle as many as six carriers at one time on a monopole tower, maybe a little less depending on the structure rules on that.

Mr. Eslinger said he would like to see them check out other properties.

Darren Eslinger made a motion to continue BOA#77-05-2 until no later than the October 13, 2005 Board of Adjustment public hearing in order to give the applicant time to investigate at their discretion other properties and opportunities within the search ring area for locating the tower and provide a list of property owners contacted to the Board. The possibility of a unity of title should also be explored. Ruth Gray seconded the motion.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner

AGAINST: None

NOT PRESENT: Wolsmann, Ludecke

MOTION CARRIED: 5-0

Workshop

Ms. Greiner stated that staff had spoken with the Board at the last meeting about the possibility of having a workshop to discuss the rules and regulations since there are several new members. Since Ms. Gray will not be at the August meeting, the workshop will be held at the September meeting with a full Board present. It will be held after the public hearing portion of the meeting.

Adjournment

There being no further business, the meeting was adjourned at 6:40 p.m.

Respectfully submitted,

Sherie Ross
Public Hearing Coordinator

Donald Schreiner
Chairman